

# **EXHIBIT 11**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WAYMO LLC,  
Plaintiff,

vs.

Case No. 17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;  
OTTOMOTTO, LLC; OTTO  
TRUCKING LLC,  
Defendants.

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HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

VIDEO DEPOSITION OF TRAVIS KALANICK

San Francisco, California

Thursday, December 14, 2017

Volume III

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2771242

PAGES 504 - 668

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1 MR. PERLSON: Sure.

01:04:04

2 THE DEPONENT: -- that weren't attorneys.

3 Q. (By Mr. Perlson) Do you have an

4 understanding of what a "non-attributable device"

5 is?

01:04:09

6 A. In prep- -- in preparation for this

7 deposition, yes.

8 Q. All right. Separate and apart from what

9 you've talked about with your lawyers, is that a

10 term that you've ever used?

01:04:18

11 A. No.

12 Q. Had you heard of, while you were CEO of

13 Uber, people using devices for their work at Uber

14 that were obtained by third parties such that they

15 couldn't be attributed back to Uber?

01:04:43

16 A. No. No.

17 Q. Do you recall whether you, personally,

18 received a litigation hold notice in this case?

19 A. I -- I did.

20 Q. Okay. And --

01:05:14

21 A. I don't recall receiving it, but I think,

22 as we have gone through this litigation, that's

23 something that I think certain folks have looked

24 at, and I'm aware of it, yes.

25 Q. In -- in relation to that litigation

01:05:26

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1 of training with various attorneys, including our 01:09:48  
2 general counsel, but -- what was I going to say.  
3 The --

4 MS. DUNN: So -- and, I'm sorry, David,  
5 I'm going to interrupt your answer. 01:09:57

6 The -- I -- I want to instruct the  
7 witness not to go into advice that he may have been  
8 given by attorneys; although, I think the question,  
9 as you asked it, is an answerable question.

10 THE DEPONENT: Okay. Understood. 01:10:11

11 MS. DUNN: I don't know if you --

12 THE DEPONENT: Can you restate the  
13 question real quick.

14 Q. (By Mr. Perlson) Sure.

15 Are you aware of any training that was 01:10:22  
16 done --

17 A. Yeah.

18 Q. -- at Uber to instruct people on how to  
19 use the "attorney-client privilege" Designations to  
20 avoid having documents revealed in litigation? 01:10:32

21 A. Yeah, so I'm aware of  
22 attorney-client-privilege trainings that existed,  
23 but I think they did the opposite, which is, they  
24 instructed people on not using attorney-client  
25 privilege in ways that it shouldn't be. 01:10:47

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1 involved in any investigation on this. The company 04:56:59  
2 certainly has conducted an investigation I have not  
3 seen the results of.

4 Q. (By Mr. Perlson) Okay. So sitting here  
5 today, you really are not in a position to say 04:57:12  
6 whether what's in here is true or not?

7 A. I can only say that I have -- like, with  
8 all the questions you've asked, I don't have any  
9 knowledge of those things that I've indicated I  
10 have zero knowledge of. 04:57:25

11 It feels like this is a lot of creative  
12 writing ex- -- creative writing exercise. But we  
13 have an investigation that will get to the bottom  
14 of that.

15 Q. Right. Which you're not a part of? 04:57:39

16 A. That's correct.

17 (Exhibit 9119 was marked for  
18 identification by the court reporter and is  
19 attached hereto.)

20 (Discussion off the stenographic record.) 04:58:23

21 Q. (By Mr. Perlson) I have handed you  
22 what's been marked as Exhibit 9119, an email from  
23 Halunen Law to Angela Padilla.

24 So have you seen this document before?

25 A. No. 04:59:38

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1 Q. You're aware of its existence, correct?

04:59:49

2 A. Yes.

3 Q. And when were you first made aware of the  
4 existence of this May 5th letter on 919- -- 9119?

5 A. I don't know the exact date that I was  
6 made aware. It was sort of, like, a -- a vague  
7 reference to a long letter that I had never seen.

05:00:04

8 Q. Okay. Do you think it was close in time  
9 to the date of the letter, May 5th?

10 A. I don't know for sure. It felt like

05:00:23

11 it -- like -- it felt like there -- like it had  
12 existed for a while when I heard of it, but I  
13 wasn't at Uber much longer. I mean, I had left --  
14 leave of absence maybe a month after this and  
15 resigned a month and a half -- so -- but it felt  
16 like it -- it is the way it was -- the way it was  
17 mentioned, it felt like it had been around for a  
18 while.

05:00:40

19 Q. Do you recall who -- who -- who would  
20 have first told you about it?

05:00:57

21 A. It -- I -- it may have been Angela or --  
22 or Joe. I -- I can't remember which one, but it --  
23 it's just my recollection was like this -- like a  
24 vague, sort of, reference to a letter. And  
25 somebody said like 37 pages.

05:01:17

1 A. Okay. Let me just read it real quick. 05:03:19

2                      Okay.

3 Q. Do you see that it indicates: "Clark and  
4 Henley helped implement and directed the  
5 almost-exclusive use of ephemeral and encrypted 05:05:05  
6 communications software, including WickrMe (and  
7 later Wickr SCIF), to communicate sensitive  
8 information within ThreatOps"?

9           A.     Yeah, I see that.

10 Q. Do you have any knowledge of -- of that 05:05:22  
11 occurring?

12                      A.       No .

13 Q. Were the operations of ThreatOps  
14 something that you would have had insight to while  
15 you were CEO? 05:05:38

16                      A.       No.

17 MS. DUNN: Objection to form.

18 Q. (By Mr. Perlson) If you look at --  
19 actually, I told you I wasn't going to ask you  
20 about the second paragraph and now I am, but -- 05:05:51

21           A.     It's okay. I read it.

22 Q. The -- it says "Further, Clark and Henley  
23 directly instructed Jacobs to conceal documents in  
24 violation of Sarbanes-Oxley by attempting to  
25 'shroud' them with attorney-client privilege or 05:06:08

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1 work product protections. Clark taught the 05:06:10

2 ThreatOps team that if they marked communications

3 as 'draft,' asked for a legal opinion, at the

4 beginning of" the "email, and simply wrote

5 'attorney-client privilege' on documents, they 05:06:20

6 would be immune from discovery."

7 Are you aware of any training to that

8 effect by the -- to the ThreatOps team?

9 A. No.

10 Q. Are you aware of any training to that 05:06:34

11 effect for -- at Uber outside of the ThreatOps

12 team?

13 A. No.

14 Q. If you see in the -- on page 7, it's --

15 title is "Concealment and Destruction of Records 05:07:18

16 Using Non-attributable Hardware."

17 Do you see that? B?

18 A. Where is this? B?

19 Q. It's the heading.

20 A. Oh, yeah, yeah. Sorry. Yes. 05:07:33

21 Q. And then in the third -- third

22 paragraph it says "By storing this data on

23 non-attributable devices, Uber believed it would

24 avoid detection and never be subject to legal

25 discovery." 05:07:50



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1 Are you aware of any use of 05:07:52

2 non-attributable devices for that purpose at Uber?

3 A. No.

4 Q. If you look on the next page 8,

5 section C, it starts "Clark developed training on 05:08:24

6 how to use attorney-client privilege to further

7 conceal activities described in any non-ephemeral

8 communication channel. Specifically, he developed

9 a training using innocuous legal examples and the"

10 lower -- "'lawyer dog' meme to" protect -- "to 05:08:41

11 produce a slide deck that taught the ThreatOps team

12 how to utilize attorney-client privilege to impede

13 discovery."

14 Are you familiar with any such training

15 at Uber? 05:08:59

16 A. I am not.

17 Q. Do you know what he's referring to there

18 with the "lawyer dog"?

19 A. No.

20 Q. You never saw anything like that? 05:09:03

21 A. No.

22 Q. You didn't re- -- you didn't attend any

23 lawyer -- lawyer dog presentations?

24 A. No.

25 MS. DUNN: Objection to form. 05:09:20

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1 A. Generally briefed by Dara and by Tony.

05:20:54

2 Q. If you look under the bullet points,  
3 there's -- it says "These tactics were employed  
4 clandestinely through a distributed architecture of  
5 anonymous servers, telecommunications architecture,  
6 and non-attributable hardware and software."

05:21:28

7 Do you see that?

8 A. Yeah.

9 Q. Are you aware of the use of anonymous  
10 servers by Uber?

05:21:39

11 A. No.

12 Q. If you look on the bottom of page 12, it  
13 says "Jacobs is aware that Uber used the MA team to  
14 steal trade secrets at least from Waymo in the US."

15 Do you see that?

05:22:36

16 A. "Jacobs is aware..."

17 Q. It's the last sentence.

18 A. "He" -- "He vetted insiders" -- oh,  
19 Jacobs is aware" -- there we go. Yeah, I see it.  
20 Yeah.

05:22:47

21 Q. Do you have any knowledge of  
22 Marketplace Analytics doing that?

23 A. Absolutely not.

24 Q. Why don't you read the -- the two  
25 paragraphs under "Waymo" on page 13, and let me

05:23:06

1 I, Rebecca L. Romano, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

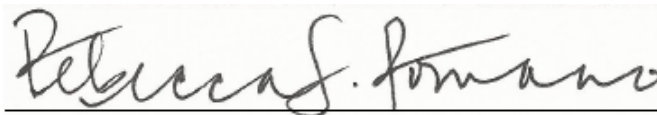
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath;  
8 that a record of the proceedings was made by me  
9 using machine shorthand which was thereafter  
10 transcribed under my direction; that the foregoing  
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ ] was [x] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: December 15, 2017

22  
23   
24

25 Rebecca L. Romano, RPR,  
CSR. No 12546